HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1380 of 2006

Between

P.Ramulu ..Appellant

AND

The Commissioner for Prohibition and Excise, Government of Andhra Pradesh and others ..Respondents

:: JUDGMENT ::

Counsel for the appellant	Sri P.Venugopal
Counsel for the respondents	Government Pleader for Prohbition and Excise

3.1.2007

Per G.S.Singhvi, CJ

This appeal is directed against order dated 8-12-2006 passed by the learned Single Judge upholding the cancellation of the licences of Toddy Co-operative Society, Kosgi (for short, 'the Society'), of which the appellant is the President.

The Society was granted four licences under the Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 (for short, 'the Rules') for retail sale of toddy in the shops situated at Kosgi and one licence for Toddy Depot at Kosgi. The tenure of the licences was five years commencing from 1-4-2002. On 19.10.2004, officers of the Prohibition and Excise Department along with mediators conducted a surprise check on Toddy Depot, Kosgi at about 11.45 a.m. During the check, the officers found stock of 4,000 litres of toddy in two wooden tubs. Sri Kulakati Mogulappa, son of Sayappa, resident of Kosgi, who was present at the depot, informed the officers that toddy was being supplied from the depot to Shop Nos.1, 2, 3 and 4 for which licences had been granted to the Society. On testing, the toddy was found adulterated with chloral hydrate. The officers drew three samples under the cover of panchanama and destroyed the remaining quantity. Thereafter, a criminal case was registered under Section 37(a) of the Andhra Pradesh Excise Act, 1968 (for short, 'the Act'). At 6.00 p.m., officers of the department along with mediators conducted a surprise check at toddy shop No.2 of Kosgi Village and Mandal. They found 312 litres of toddy in 40 crates. Sri D.Suresh Goud, who was selling toddy at the spot provided the samples, which, on being tested were found adulterated with chloral hydrate. The officers drew three samples

under the cover of panchanama and destroyed the remaining quantity. This was followed by registration of another case under Section 37(a) of the Act. The Government Chemical Examiner for Prohibition and Excise, Hyderabad, to whom the samples were sent, confirmed that the toddy was adulterated with chloral hydrate.

On receipt of the report of the Chemical Examiner, Prohibition and Excise Superintendent, Mahboobnagar (respondent No.3) suspended the licences of Toddy Depot, Kosgi and the shops. The appellant challenged the same by filing an appeal. He also applied for stay of the suspension of licences. He pleaded that the toddy had not been adulterated and false case has been foisted on the Society. For this purpose, he relied on the second chemical analysis report obtained from State Food Laboratory, Nacharam. Initially, Deputy Commissioner of Prohibition and Excise, Mahboobnagar (respondent No.2) stayed the suspension of licences, but after going through the records, he dismissed the appeal vide his order dated 8-9-2005. The appellant carried the matter before Commissioner, Prohibition and Excise, Hyderabad, but could not persuade him to order revival of the licences. He then filed Writ Petition No.8272 of 2006, which was disposed of by the High Court on 24-4-2006 with a direction that the enquiry initiated against the petitioner be completed and appropriate order be passed within four weeks. Writ Appeal No.533 of 2006 filed by the appellant against the order of the learned Single Judge was disposed of by the Division Bench on

24-5-2006 by approving the direction given by the learned Single Judge with the rider that if the licensing authority finds any impediment in the matter of conclusion of the proceedings, then he shall consider the feasibility of revoking the suspension.

In the meanwhile, respondent No.2 issued notice dated

20-9-2005 proposing cancellation of the licences of the Society on the ground of violation of conditions incorporated in the orders of grant. The same was duly served on the appellant on

30-9-2005, but he did not file reply to contest the same. Therefore, after examining the record including the reports of the Chemical Examiner, respondent No.3 passed order dated 26-5-2006, whereby he cancelled the licences of Toddy Depot, Kosgi and its constituent Shop Nos.1, 2, 3 and 4. The appeal preferred by the appellant against the cancellation order was dismissed by respondent No.2 vide his order dated 21-7-2006. Respondent No.2 noted that the samples taken from the depot and one of the shops were found adulterated and held that there was no valid reason to interfere with the order of cancellation. The last two paragraphs of the order passed by respondent No.2 read as under:

> "I have gone through the entire records and it is found that based on the spot test conducted at the toddy depot and Kosgi shop No.2 as a precautionary measure in public interest of toddy depot as well as its constituent shops were suspended on 25-1-2004 pending enquiry as toddy was found adulterated with chloral hydrate. Later, after completion of due enquiry and giving an opportunity and taking into consideration of the 1st and 2nd sample analysis reports, the Prohbn.and Excise Superintendent, Mahboobnagar has rightly cancelled the licences of toddy depot and its constituent 4 toddy shops of TCS Kosgi.
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> I see no reason to interfere with the orders of the Prohbn. & Excise Superintendent cancelling the licences of Kosgi toddy depot and its constituent shops numbering 1 to 4 even though the second toddy sample from the independent lab is found to be free from adulteration of chloral hydrate, diazepam and alprazolam as the Hon'ble High Court of A.P. has observed that in respect of conflicting analysis reports the cancellation of licence shall go in favour of the consumer rather than in favour of the licensee."

The appellant then filed Writ Petition No.24920 of 2006 with the prayer that the order of cancellation of the licences be declared ultra vires the provisions of the Act and the Rules and violative of the principles of natural justice. In the affidavit filed by him, the appellant pleaded that the inspection had been carried out in violation of Rule 24 of the Rules and the order of cancellation was passed in a routine manner. He further pleaded that without drawing samples from Shop Nos.1, 3 and 4, the authorities could not have cancelled the licences bearing No.93, 95 and 96. This is evinced from paragraphs 9, 13 and 14 of the appellant's affidavit, which are extracted below:

> "9. I submit that the 1st respondent not only cancelled the licence bearing No.1 of toddy depot TCS Kosgi and shop No.2 but also cancelled un-inspected shop Nos.1, 3 and 4 licence bearing Nos.93, 95 and 96, dt.28-9-2002 which were not at all and no samples were drawn and there is no allegation or any violation. The impugned order is illegal, contrary to law and unjust. I submit that this Hon'ble Court has decided the above issue in identical matters holding that the action of the licensing authority in suspending or cancelling the licence u/s.31 of the A.P. Excise Act by inspecting one licensed premises and taking action against all other licensees without inspecting the other licensed premises is bad. The said orders were upheld by the Division Bench of this Hon'ble Court.
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> 13. It is, therefore, prayed that this Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in cancelling the petitioner licences of un-inspected shop Nos.1, 3 and 4 i.e. licence bearing Nos.93, 95 and 96 of Kosgi Village & Mandal, Mahboobnagar District vide proceedings Cr.No.B1/3275/2004, dt.26-5-2006 of the 3rd respondent is illegal, arbitrary and violative of Article 21 of the Constitution of India and consequently set aside the proceedings of the 3rd respondent vide Cr.No.B1/ 3275/2004, dt.26-5-2006 and pass such other order or orders as may

deem fit and proper in the circumstances of the case.

14. It is also just and necessary that this Hon'ble Court may be pleased to suspend the proceedings of the 3rd respondent vide B1/3275/2004, dt.26-5-2006 to the extent of licences bearing Nos.93, 95 and 96 of Kosgi Village and Mandal, Mahboobnagar District, pending disposal of the above writ petition and pass such other order or orders as may deem fit and proper in the circumstances of the case."

The learned Single Judge took cognizance of the fact that the depot and four shops were maintained by the Society and the toddy was supplied to the shops from the depot and concluded that adulteration of the toddy in the depot, constituted a valid ground for cancellation of the licences of the shops as well. The learned Single Judge also noted that the depot was being used for pooling toddy and, as a matter of fact, toddy was supplied to the shops from the depot, and held that respondent No.2 did not commit any illegality by cancelling the licences.

Sri P.Venugopal, learned counsel for the appellant argued that the reasons assigned by the learned Single Judge for upholding the order of cancellation are erroneous and, therefore, the order under challenge is liable to be set aside. He submitted that the Society had been granted independent licences for the shops and depot and, therefore, even if the finding recorded by respondent No.3 about adulteration of toddy found in the depot is treated as correct, the cancellation of the licences of three shops is liable to be declared as nullity. Learned counsel emphasized that there is no evidence regarding adulteration of the toddy sold at Shop Nos.1, 3 and 4 and argued that the licences of these shops could not have been cancelled simply because the toddy being stored in the depot was found adulterated.

In our opinion, there is no merit in the submission of the learned counsel and the appeal is liable to be dismissed. Section 31, which provides for cancellation or suspension of licence, and Section 37(a), which provides for penalty for adulteration etc. by licensed vendor or manufacturer, read as under:

31. Power to cancel or suspend licence etc:-

(1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates.

(a) if any duty or fee payable by the holder thereof is not duly paid; or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act, or

(d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Narcotics Drugs and Psychotropic Substances Act 1985 (Central Act 61 of 1985) or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958 or under Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489 of the Indian Penal Code or of any offence punishable under Section 112 or Section 114 of the Customs Act, 1962, irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will :

Provided that no licence or permit shall be cancelled or

suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence granted or permit issued to such persons under this Act, or under the Opium Act, 1878.

(3) The holder of licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

37. Penalty for adulteration, etc. by licensed vendor or manufacturer:-

Whoever being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person in the employ of such holder,_

(a) mixes or permits to be mixed with intoxicant sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under this Act when such admixture does not amount to the offence of adulteration under Section 272 of the Indian Penal Code; xx

shall on conviction, be punished with imprisonment, -

(i) in the case of first offence for a term which shall not be less than one year but which may extend upto three years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees thirty thousand;

(ii) in the case of a second or subsequent offence for a term which shall not be less than two years but which may extend upto three years and with fine which shall not be less than rupees fifty thousand but which may extend upto rupees one lakh."

A conjoint reading of the above reproduced provisions makes it clear that the authority competent to grant any licence or permit under the Act can cancel or suspend the same irrespective of the tenure of

licence or permit if any of the contingencies specified in Clauses (a) to (e) of Section 31 (1) is found to exist. If the licence holder violates the terms and conditions of licence or is convicted of any offence specified under the Act or under other enactments enumerated in clause (d), then the licence can be cancelled or suspended. If the conditions of licence provide for cancellation

at will, then power under Section 31 (1) can be exercised.

Section 37 (a) provides that if a licencee mixes or permits mixing of any noxious drug or foreign ingredient with the intoxicant sold or manufactured by him, which is likely to add to the actual or apparent intoxicating quality or strength of the intoxicant, he can be booked for an offence and punished under Section 37(a) of the Act.

In the present case, the licensee was found to have adulterated the toddy supplied from the depot to the shops through which it was sold to the public. The factum of adulteration was confirmed by the chemical examination of the sample collected from one of the shops. The averments contained in paragraphs 9, 13 and 14 of the affidavit filed by the appellant show that he has impliedly admitted adulteration of the toddy found at the depot and Shop No.2. Else, there was no reason for him to have confined the prayer for quashing order dated

26-5-2006 only qua Shop Nos.1, 3 and 4. Therefore, the order of cancellation of licences cannot be dubbed as arbitrary or illegal and we do not find any valid reason to upset the order passed by the learned Single Judge.

We are further of the view that the appellant, who is accused of having indulged in adulteration of toddy for which licences were granted under the Act and the rules framed thereunder, has no right to seek intervention of the Court under Article 226 of the Constitution of India. A person like the appellant, who does not have respect for law,

cannot be allowed to avail constitutional remedies which are available to the law abiding citizens for protection of their constitutional and legal rights and against arbitrary exercise of executive power of the State and its machinery.

No other point has been argued.

In the result, the appeal is dismissed. The appellant shall pay costs of Rs.5,000/-, which shall be deposited with the Andhra Pradesh State Legal Services Authority, Hyderabad, within a period of one month.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

3.1.2007.

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